sional districts is destructive of a republican form of government. U. S. CONST., Art. 4, § 4. This is a political question not for judicial determination. *Pacific States Tel. & Tel. Co.* v. *Oregon*, 223 U. S. 118. See 24 HARV. L. REV. 141. *Cf. Kiernan* v. *City of Portland*, 57 Ore. 454, 112 Pac. 402; *State* v. *Board of Commissioners*, 93 Kan. 405, 144 Pac. 241. But the question whether the word "legislature" in Art. 1, § 4, of the Constitution means the periodical representative assembly of the state, or the whole constitutional law-making machinery, including, as in this case, the people acting by initiative or referendum, was not discussed. The latter construction has been approved by a decision of the Supreme Court of South Dakota. *State ex rel. Schrader* v. *Polley*, 26 S. Dak. 5, 127 N. W. 848. See 24 HARV. L. REV. 220. In 1911 Congress impliedly recognized the more inclusive definition by providing that states might redistrict themselves "in the manner provided by the laws thereof." 37 STAT. AT LARGE, 13, ch. 5, COMP. STAT. 1913, § 15. The decision in the principal case assures the constitutionality of this act, and, although it does not in terms discuss the point, necessarily sanctions the definition of the South Dakota case.

CONTRACTS — DEFENSES: IMPOSSIBILITY — FAILURE OF CONSIDERATION — DIMINUTION OF PRICE. — In 1911 a gas company entered into a contract with an urban council whereby the gas company was to install a gas plant, furnish street lamps, and maintain them for five years. The council agreed to pay therefor a fixed annual sum per lamp, payment to be made in four equal quarterly installments. On January 1, 1915, the Defence of the Realm Act prohibited lighting street lamps "until further order." Consequently no gas was consumed between January 1, 1915, and November 1, 1915, when the gas company sued for the first three quarterly installments of 1915. *Held*, the gas company can recover. *Leiston Gas Co.* v. *Leiston-cum-Sizewell Urban District Council*, [1916] 2 K. B. 428.

Where performance is rendered impossible by domestic law, the promisor is not liable. *Bailey* v. *De Crespigny*, L. R. 4 Q. B. 180; *Horlock* v. *Beal*, [1916] 1 A. C. 486; *Cordes* v. *Miller*, 39 Mich. 581. This defense rests upon the policy of the law in refusing to force a party to do that which it has expressly forbidden. See 18 HARV. L. REV. 384. The principal case goes further, in that it allows the defaulting party to profit by his non-performance. The court, considering the erection of the plant and lighting system, the full performance for a long period, and the indefinite duration of the order, decided that there had not been a substantial failure of consideration. Thus the plaintiff's breach neither created liability, nor did it furnish a defense for defendant's refusal to perform. It would seem equitable in such a case to diminish the contract price, to which the plaintiff is thus entitled, to the extent that he has profited by his non-performance. In the principal case, under this rule, the plaintiff would recover the installments reduced by the expenses which he has saved by his non-performance. He would then recover fully for the services performed and his profit for the whole. This remedy in the nature of a recoupment for unearned enrichment is recognized in France, Germany, and other jurisdictions following the civil law. See WILLISTON, SALES, § 606. Surely the law, having created the loss, should apportion it equitably.

CORPORATIONS — CAPITAL, STOCK, AND DIVIDENDS — NATURE OF OVER-ISSUED STOCK. — The defendant corporation issued stock certificates in excess of its charter limit to a purchaser for value without notice. The purchaser assigned to a third person for value "all claims and demands of every description and kind" against the defendant. Later he assigned the certificates without consideration to the plaintiff. The defendant refused to issue new certificates to the plaintiff. The plaintiff sues. *Held*, that he may not recover. *Smith* v. *Worcester, etc. Ry. Co.*, 113 N. E. 462 (Mass.).

An issue of stock in excess of the charter limit is void. *New York, etc. R. Co.*